

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

HIEU TRUONG,

3:10-CV-00558-HU

Plaintiff,

ORDER

v.

CHER YAO CHEN, M.D., of
Oregon State Hospital,

Defendant.

HIEU TRUONG
#11999198
Snake River Correctional Institution
777 Stanton Blvd.
Ontario, OR 97914

Plaintiff, *Pro Se*

JOHN KROGER
Attorney General
JUSTIN E. KIDD
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Salem, OR 97301
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Attorneys for Defendant

BROWN, Judge.

Magistrate Judge Dennis James Hubel issued Findings and Recommendation (#42) on January 6, 2012, in which he recommends the Court grant Defendant's Motion (#23) for Summary Judgment. Plaintiff filed Objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). *See also Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)(*en banc*).

I. Procedural background

On May 17, 2010, Plaintiff Hieu Truong filed this action against Defendant Cher Yao Chen for damages allegedly resulting from an injury Plaintiff suffered while he was a patient at Oregon State Hospital (OSH).

On March 7, 2011, Defendant filed a Motion for Summary Judgment.

On April 6, 2011, Plaintiff filed an unopposed Motion seeking a 90-day extension of time to respond to Defendant's Motion for Summary Judgment on the grounds that Plaintiff had limited access to legal materials, had limited time to speak with

a legal assistant, was required to write all pleadings by hand, and suffers "frequent unbearable headaches and nausea." The Magistrate Judge granted Plaintiff's Motion and set a deadline of July 7, 2011, for Plaintiff to file his response.

On July 8, 2011, Plaintiff filed a second Motion for Extension of Time seeking 180 days to respond to Defendant's Motion for Summary Judgment on the grounds that Plaintiff had been unable "to do discovery motions," was "unable to properly respond to defendant's motion," and continued to have "health issues" which he attributed to the injury giving rise to this action.

On July 12, 2011, the Magistrate Judge granted Plaintiff's Motion to the extent that he allowed Plaintiff until September 1, 2011, to respond to Defendant's Motion. The Magistrate Judge advised Plaintiff that the deadline would not be extended again absent a showing of extraordinary cause, and if Plaintiff relied on health issues for any additional requests for extensions, such request would have to be supported by a doctor's statement.

The docket reflects the Magistrate Judge's Order was mailed to Plaintiff on July 8, 2011. Plaintiff, however, failed to file a response to Defendant's Motion for Summary Judgment by September 1, 2011.

On December 22, 2011, Plaintiff filed a Motion requesting a six-month extension of time to respond to Defendant's Motion for

Summary Judgment on the grounds of "health issues" and lack of time "to do discovery motions." Plaintiff, however, did not include a doctor's supporting statement.

As noted, on January 6, 2012, the Magistrate Judge issued Findings and Recommendation in which he found Plaintiff failed to show good cause for any additional extension of time to respond to Defendant's Motion for Summary Judgment and denied Plaintiff's Motion. The Magistrate Judge then considered the merits of Defendant's Motion for Summary Judgment and now recommends the Court grant that Motion.

On February 2, 2012, Plaintiff filed a Motion for Extension of Time to File an Objection to Findings and Recommendation on the grounds of limited access to the law library and to a legal assistant.

On February 9, 2012, the Court entered an Order granting Plaintiff's Motion and requiring Plaintiff to file Objections no later than February 23, 2012.

On February 27, 2012, Plaintiff filed Objections to the Findings and Recommendation.

II. Analysis

In Plaintiff's Objections he asserts the Magistrate Judge erred in granting Defendant's Motion for Summary Judgment because Plaintiff was not allowed sufficient time to conduct discovery because Plaintiff is "mentally ill and is uneducated in the law."

The Court disagrees. The record reflects the Magistrate Judge provided Plaintiff with ten months to conduct discovery and to respond to Defendant's Motion. In addition, Plaintiff even has failed to provide a doctor's statement to support his assertion that "health issues" have prevented him from responding to Defendant's Motion in a timely manner as directed by the Magistrate Judge.

In summary, this Court has carefully considered Plaintiff's Objections and concludes they do not provide a basis to modify the Findings and Recommendation. The Court also has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation.

CONCLUSION

The Court **ADOPTS** Magistrate Judge Hubel's Findings and Recommendation (#42) and, therefore, **GRANTS** Defendant's Motion (#23) for Summary Judgment and **DISMISSES** this matter **with prejudice**.

IT IS SO ORDERED.

DATED this 8th day of March, 2012.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge